

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34

THAMES VALLEY COUNCIL FOR
COMMUNITY ACTION, INC.

Employer¹

and

CONNECTICUT STATE EMPLOYEES
ASSOCIATION, LOCAL 2001, SEIU,
AFL-CIO, CLC

Petitioner

Case No. 34-RC-2030

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, I find that: the hearing officer's rulings are free from prejudicial error and are affirmed; the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction; the labor organization involved claims to represent certain employees of the Employer; and a question affecting commerce exists concerning the representation of certain employees of the Employer.

The Petitioner seeks to represent a unit of approximately 29 full-time and regular part-time Head Teachers employed by the Employer in its Head Start and Early

¹ The name of the Employer appears as amended at the hearing.

Childhood Education (ECE) programs that are located at approximately 13 locations in southeastern Connecticut.² The Employer primarily contends that all of the Head Teachers are supervisors within the meaning of the Act. It further asserts that even if the Head Teachers are not supervisors, a unit limited to Head Teachers is not appropriate. For the reasons noted below, I agree with the Employer's primary claim that the Head Teachers are statutory supervisors, and thus find it unnecessary to address the issue of whether the petitioned-for unit is otherwise appropriate.

The Employer operates Head Start, ECE, and various other social service programs in New London and Windham counties. Head Start is a federally-funded child development program designed to prepare young children for school. ECE is a similar State-funded program. All of the 29 Head Teachers in dispute are employed either in Head Start (21) or ECE (8), and their duties and responsibilities are the same regardless of whether they work in Head Start or ECE.

Director of Head Start Mary Guertin is primarily responsible for the Employer's Head Start operations. Reporting directly to Guertin are two assistant directors. Reporting directly to the assistant directors are three Education Managers, who are responsible for overseeing the daily operations of the Head Start program.³ Each of the 21 Head Teachers in the Head Start program report directly to one of the three Education Managers. Each Head Teacher in Head Start is assigned to a classroom

² The Petitioner previously sought to represent the Employer's Head Teachers through the petition it filed in Case No. 34-RC-2027. However, it entered into a Stipulated Election Agreement in that case for a unit consisting of all teachers, assistant teachers, teacher aides, family advocates, nutrition site servers, cooks and mini-bus drivers, but excluding the Head Teachers. The election in that case is scheduled for May 9, 2003.

³ Also reporting to the assistant directors are 15 "Content Area" Managers covering such areas as Nutrition, Mental Health, Disabilities, Family Services, Health, Parent Involvement, Community Outreach, Outcomes Resource, and Home Based.

and is responsible for the daily operations in that classroom. Also assigned to each classroom in Head Start, and reporting directly to the Head Teacher, is either a Teacher or Assistant Teacher. In addition, 14 of the 21 classrooms have two teacher aides who report directly to the Head Teacher. There are also five cooks and five nutrition site server/cook aides who report directly to Head Teachers.

Director of Early Education Deborah Poirier is primarily responsible for the Employer's ECE program. Reporting directly to Poirier is an Assistant Director, who in turn oversees two Site Managers. The eight Head Teachers in the ECE program report to the Site Managers. Each Head Teacher in ECE is assigned to a classroom in one of three sites: Taftville, Bayonet Street, and Three Rivers. The Head Teachers at Taftville and Bayonet report directly to the Site Manager at each location.⁴ As in the Head Start program, each Head Teacher in ECE is responsible for the daily operations in their assigned classroom. Also assigned to the eight classrooms in ECE where there is a Head Teacher, and reporting directly to the Head Teacher, are an Assistant Teacher and two teachers aides.⁵

In support of its assertion that the Head Teachers are supervisors within the meaning of Section 2(11) of the Act, the Employer primarily claims that Head Teachers have the authority to evaluate, discipline, grant time off, and hire employees.

Evaluations

Head Teachers in both the Head Start and ECE programs prepare annual evaluations for the teachers, assistant teachers and teacher aides assigned to their

⁴ The record does not reflect the Site Manager to whom the Head Teacher at Three Rivers reports.

⁵ There are two ECE classrooms without a Head Teacher (TVCCA Norwich and TVCCA on the Thames). A Center Manager supervises those two classrooms, each consisting of a Teacher, assistant teacher, and teacher aides.

classroom, as well as nutrition site servers/cook aides. A private review is conducted by the Head Teacher with each employee, and the Head Teacher then ranks the employee in a variety of areas, culminating in a “final score.” The Head Teacher sends the evaluation to their Education Manager, who passes it on to the Director for her signature. Once the Director has signed the evaluation, it is delivered to the Human Resources department, where a staff member reviews the accuracy of the Head Teacher’s numerical score. If the evaluated employee’s final score is 8 or above, the employee automatically receives a merit bonus. Merit bonuses have been awarded to employees based upon their “final score” from their evaluation prepared by the Head Teacher.

Discipline

The Employer has a progressive discipline system, with verbal warning as the first step, followed by a written warning, suspension, and discharge. Although the record reflects that the issuance of written discipline is rare and generally avoided, Head Teachers have the authority, which they have exercised, to issue verbal and written warnings without supervisory approval. In this regard, within the last year two employees received written “verbal warnings” from two different Head Teachers, both of which were issued without prior approval from an Education Manager. Although Head Teachers may also recommend the suspension or discharge of employees, there is no evidence that this has ever occurred. In the Head Start program, all terminations must be approved by the “Policy Council”, a governing board comprised of parents and community representatives that meets monthly to consider policy matters.

Grant Time Off

Head Teachers have the authority to grant time off to employees assigned to their classroom, including vacation requests. In doing so, Head Teachers often call the payroll office to confirm that an employee has the desired leave available before approving the request. A Director must approve longer requests, such as for a leave of absence.

Hiring

Hiring in Head Start is done by the Policy Council. However, Head Teachers may screen applicants whose names are received from the Human Resources department, arrange for interviews with parents, and make hiring recommendations. The record does not reflect whether such hiring recommendations have been followed.

Head Teachers in ECE have greater input in the hiring process than their counterparts in Head Start. Initial applications are reviewed by the Human Resources department and sent to the Site Manager, who screens the applicants. The Manager then arranges for a group interview of the applicant, in which the Manager and the Head Teacher participate. The Head Teacher completes an interview evaluation form and makes a hiring recommendation. The record reflects only one instance when an ECE Head Teacher's hiring recommendation was followed.

Other Factors

Head Teachers in both Head Start and ECE regularly attend supervisory meetings with other undisputed supervisors, receive regular supervisory training, and are paid at least a dollar an hour more than teachers and assistant teachers. Head Teachers may also temporarily transfer employees to other classrooms. Head Teachers

also monitor the time worked by employees by filling out weekly or biweekly time sheets certifying their attendance. Finally, the Head Teacher's job description contains a reference to supervisory qualifications and, while it contains no explicit reference to any disciplinary authority, states that Head Teachers must have the ability to supervise and motivate center staff and "apply decision making, problem solving, organizational and leadership skills."

Analysis and Conclusion

It is well established that the burden of proving supervisory status is upon the party asserting it. *Pine Brook Care Center, Inc.*, 322 NLRB 740 (1996), and cases cited therein at footnote 3. For the reasons noted below, I find that the Employer has met its burden.

More specifically, I find that the Head Teacher's authority to discipline employees and independently prepare employee evaluations that can lead to pay increases establishes that they are supervisors within the meaning of Section 2(11) of the Act. *First Healthcare Corp. d/b/a Hillhaven Kona Healthcare Center*, 323 NLRB 1171 (1997) (evaluations); *Healthcare & Retirement Corp.*, 310 NLRB 1002, 1006-1007 (1993) (evaluations); *Rhode Island Hospital*, 313 NLRB 343, 348 (1993)(evaluations); *Pine Manor Nursing Center*, 270 NLRB 1008, 1009 (1984) (discipline and evaluations); *Venture Industries, Inc.*, 327 NLRB 918, 919 (1999)(discipline). In reaching this conclusion, I also note that the ratio of employees to supervisors would be inordinately high if the Head Teachers are found not to be supervisors. More specifically, a contrary determination would result in only five individuals (the three Education Managers in Head Start and two Site Managers in ECE) being responsible for the supervision of

approximately 100 employees at many different locations, with no on-site supervision in many classrooms. See *Wright Memorial Hospital*, 255 NLRB 1319, 1320 (1980).

Accordingly, inasmuch as the Head Teachers are the only employees in the petitioned-for unit, the petition is dismissed.

Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by May 20, 2003.

Dated at Hartford, Connecticut this 6th day of May, 2003.

/s/ Peter B. Hoffman
Peter B. Hoffman, Regional Director
Region 34
National Labor Relations Board

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